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MASTERPIECE CAKESHOP, LTD., ET AL.,
Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION, ET AL.,
Respondents.

On Writ of Certiorari to the
Colorado Court of Appeals

BRIEF OF *AMICI CURIAE* LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC., FAMILY EQUALITY COUNCIL, ET AL., IN SUPPORT OF RESPONDENTS

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INTERESTS OF *AMICI CURIAE*

Amici Curiae are Lambda Legal Defense and Education Fund, Inc. (Lambda Legal), Family Equality Council (Family Equality), and eleven other national and state-based organizations working to secure full civil rights, inclusion, safety and equal dignity for lesbian, gay, bisexual and transgender (LGBT) Americans and their families.[1]

Lambda Legal is the nation's oldest and largest nonprofit legal organization working for full recognition of the civil rights of LGBT people and everyone living with HIV, through impact litigation, education, and policy advocacy. *See, e.g.*, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); *Lawrence v. Texas*, 539 U.S. 558 (2003); *Romer v. Evans*, 517 U.S. 620 (1996).

Lambda Legal has represented same-sex couples or appeared as *amicus curiae* in numerous cases in which religious freedom and/or free speech was asserted to justify discrimination against same-sex couples. *See, e.g., Washington v. Arlene's Flowers, Inc.*, 389 P.3d 543 (Wash. 2017); *Klein, dba Sweetcakes by Melissa v. Oregon Bureau of Lab. & Indus.*, No. CA A159899 (Or. Ct. App. filed April 25, 2016); *Cervelli v. Aloha Bed & Breakfast*, No. CAAP-13-0000806 (Haw. Ct. App. filed May 13, 2013); *N.*

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[1] All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici*, their members, or their counsel made a monetary contribution to its preparation or submission.

Coast Women's Care Med. Grp., Inc. v. Superior Ct. (Benitez), 189 P.3d 959 (Cal. 2008).

Family Equality is a national organization that connects, supports, and represents the three million LGBT parents in this country and their six million children. The organization is committed to changing attitudes and policies to ensure that all families are respected, loved, and celebrated—including families with LGBT parents. For over thirty years, Family Equality has been a community of parents and children, grandparents and grandchildren, reaching across the country and raising voices toward fairness for all families.

Also joining this brief are American Federation of Teachers, AFL-CIO; Equality California; Equality Federation; The LGBT Bar Association of Greater New York; Mazzoni Center; National Center for Transgender Equality; National Education Association; PFLAG National; PROMO; The Trevor Project; and Whitman-Walker Health. Full statements of interest for these *amici* are provided in Appendix A.

SUMMARY OF THE ARGUMENT

Across America, LGBT people are subjected to pervasive discrimination. This discrimination often blindsides its targets, hitting without warning during the myriad transactions that make up daily life. As a result, many LGBT people live defensively, always on guard against the next humiliating, ostracizing incident. From casual shaming to harassment to outright refusals of service, the treatment visited

upon this minority effectively subordinates to others' biases their freedom to live with equal dignity.

Whether or not couched as religion and/or free speech, discrimination against LGBT people inflicts immediate and lasting harm. This is true regardless of whether there are alternative accommodations possibly available. In the aftermath of discrimination, victims often must redirect their energy from the completion of ordinary daily tasks—or what should be joyful, celebratory planning for a significant life event—to recovery mode, focusing instead on managing the painful fall-out of the discrimination. Residual effects can include psychological and physical health problems, as well as difficulties due to delay or lack of appropriate alternatives.

It is bad enough when private actors ignore anti-discrimination laws. But, when discrimination is excused in the name of religion or free speech, its victims are abandoned, forced to endure the corrosive effects of stigmatizing discrimination without recourse. This brief contains numerous first-person accounts of anti-LGBT discrimination showing its harmful effects. These are a small but representative sampling of the vast amount of discrimination encountered by LGBT people in their daily lives.

Colorado has chosen a path of peaceful coexistence and equal access in public life by enacting protections against sexual orientation and gender identity discrimination. A ruling from this Court granting Petitioners' requested exemptions would invite increased discrimination, threaten the rule of law, and, as a practical matter, sentence LGBT people and their families to remain pariahs in many public settings. It would prove the accuracy of this Court's

past admonition that the transition from "outlaw to outcast" is inadequate to safeguard "the full promise of liberty." *Obergefell*, 135 S. Ct. at 2600.

LGBT people would not be the only ones endangered by such a result. There is no limiting principle to keep the requested loopholes from swallowing the rule of law, including civil rights laws generally. The Court should say "no," and instead allow states that choose to forbid discrimination to continue enforcing these critical safeguards for vulnerable minorities.

ARGUMENT

I. ANTI-LGBT DISCRIMINATION IS PERVASIVE IN OUR SOCIETY.

Discrimination against LGBT people is a widespread problem that permeates nearly every aspect of public life. Sejal Singh & Laura E. Durso, *Widespread Discrimination Continues to Shape LGBT People's Lives in Both Subtle and Significant Ways*, Center for American Progress (May 2, 2017) (Singh & Durso), https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways; Jennifer C. Pizer et al., *Evidence of Persistent and Pervasive Workplace Discrimination Against LGBT People: The Need for Federal Legislation Prohibiting Discrimination and Providing for Equal Employment Benefits*, 45 Loy. L.A. L. Rev. 715 (2012) (analyzing results of numerous surveys), also available at http://digitalcommons.lmu.edu/llr/vol45/iss3/3. Decades of case law, social science

research and the daily lived experiences of LGBT people all attest to the dangers of allowing discrimination in the name of religious liberty or free speech.

However, many people of goodwill remain unaware of the grinding personal costs exacted by anti-LGBT social stigma and mistreatment. Accordingly, this brief complements Respondents' briefing with examples showing the range of public accommodations contexts in which LGBT people experience discrimination, both motivated by religion and otherwise, and the significant impacts of that discrimination.

Nothing is new about efforts to justify anti-LGBT discrimination as protected exercises of religion or free speech. *See* Douglas NeJaime, *Marriage Inequality: Same-Sex Relationships, Religious Exemptions, and the Production of Sexual Orientation Discrimination*, 100 Cal. L. Rev. 1169 (2012); David Cruz, Note, *Piety and Prejudice: Free Exercise Exemption from Laws Prohibiting Sexual Orientation Discrimination*, 69 N.Y.U. L. Rev. 1176 (1994). But these demands have accelerated in recent years. Timothy Wang et al., *The Current Wave of Anti-LGBT Legislation: Historical context and implications for LGBT health*, Fenway Institute (June 2016), http://fenwayhealth.org/wp-content/uploads/The-Fenway-Institute-Religious-Exemption-Brief-June-2016.pdf. Petitioners thus are mistaken when they contend there is no compelling interest at stake here because "'no one'" is claiming a right not to serve LGBT people. Pet'r's Br. *54 (citation omitted). Petitioners similarly misstate the depth of the problem when they assert that "few ... expressive

professionals" will decline to provide wedding-related services involving an expressive component, *id.* *54-55, and that a ruling granting their requested exemptions will not "open the floodgates to other people of faith seeking similar freedom" because few such cases have occurred. *Id.* *60.

Amici offer the information in this brief because to this day, much of the damage of anti-LGBT discrimination occurs out of public view. For those at risk of rejection based on their sexual orientation or gender identity, it can seem safer to absorb the denial and try to avoid further conflict rather than publicly protest. This is especially true when social support and legal protections are uncertain.[2]

Many of the examples presented here have never been made public. Those who share their experiences in this brief do so to offer the Court a fuller picture of what many LGBT people must navigate daily, including and beyond the context of wedding planning. Contrary to Petitioners' suggestions, these challenges—depicted here through personal narratives and related research—should not be dismissed as speculation. The burdens are real and wrongfully diminish lives that should have equal dignity under our laws and in our public spheres.

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[2] *See* National Conference of State Legislatures, *State Public Accommodations Laws* (July 13, 2016), http://www.ncsl.org/research/civil-and-criminal-justice/state-public-accommodation-laws.aspx (fewer than half the states have nondiscrimination laws protecting LGBT people in public accommodations).

A. Discrimination Against LGBT People in Places of Public Accommodation Is a Serious, Pervasive Problem.

Discrimination against LGBT people occurs throughout public life, often without warning in places where most people would not expect to be denied service or treated as a second-class citizen. Researchers at UCLA have studied complaints filed in state agencies in the District of Columbia and the twenty-one states that expressly prohibit sexual orientation and/or gender identity discrimination in public accommodations. Christy Mallory & Brad Sears, *Evidence of Discrimination in Public Accommodations Based on Sexual Orientation and Gender Identity: An Analysis of Complaints Filed with State Enforcement Agencies*, 2008-2014, UCLA Williams Institute 1, 7 (Feb. 2016), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Accommodations-Discrimination-Complaints-2008-2014.pdf. They found that, as of 2016, the rate of anti-LGBT discrimination exceeded the rate of race[3] and other forms of sex-based discrimination in public accommodations. LGBT people of color and those with disabilities suffer even higher rates of discrimination than others within the LGBT community. Singh & Durso.

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[3] Of course, many LGBT people are people of color. A UCLA Williams Institute analysis of Census data quantifies this obvious fact, finding for example that among same-sex couples raising children, 28% are non-white. Gary J. Gates, *Same-sex couples in Census 2010: Race and Ethnicity*, 3, UCLA Williams Institute (April 2012), https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-CouplesRaceEthnicity-April-2012.pdf.

Consistent with these studies documenting prevalent anti-LGBT bias are the innumerable first-hand reports of those who experienced discrimination in public accommodations. These testimonials reveal an ugly truth: with disturbing frequency, LGBT people are confronted by "we don't serve your kind" refusals and other unequal treatment in a wide range of public accommodations contexts.

Lambda Legal[4] and Family Equality[5] collectively have received more than a thousand reports from across the country detailing discrimination in public accommodations reaching from cradle to grave: from denials of infertility treatment, birthing classes, midwifery services, and child care to the indignity of being refused funeral services for a deceased loved

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[4] Lambda Legal staffs a Help Desk to provide information regarding sexual orientation, gender identity, and HIV-status discrimination. *See* https://www.lambdalegal.org/helpdesk. Its professional staff maintains a confidential electronic database of these inquiries, with records going back to January 1, 2008. A search of the database for preparing this brief found nearly a thousand inquiries concerning public accommodations problems between January 1, 2008, and August 28, 2017. For each account included in this brief, staff counsel confirmed consent to include the account and its accuracy. The correspondence and written statements of each reporting party are retained on file with counsel. Appendix B hereto is a chart with identifying information for each account discussed herein.

[5] Family Equality collects stories of LGBT families and children, including reports of discrimination, to further its education, policy, and amicus work. For this brief, staff counsel conducted individual interviews and received written accounts of the incidents discussed herein. The interview notes and written submissions are retained on file with counsel, and the referenced incidents are included in Appendix B.

one. Ranging from humiliating harassment to outright service denials, the reports describe discrimination by pharmacies, hospitals, dental offices, and other medical settings; professional accounting services, automobile dealerships and repair shops, gas stations, convenience stores, restaurants, bars, hotels and other lodging; barber shops and beauty salons; stores such as big box retailers, discount stores, pet stores, clothing stores, and toy stores; swimming pools and gyms; libraries and homeless shelters; and transportation services including busses, taxis, ride-shares, trains, air travel, and cruise ships. Discrimination reports included contexts with limited alternate options, such as by tow truck drivers, post office employees, and repair service technicians working in the homes of LGBT customers.

Many reports come from transgender people, which is consistent with findings that "among transgender people who visited a place of public accommodation where staff knew or believed they were transgender, nearly one in three experienced discrimination or harassment"—including denials of equal services and even physical attacks. Singh & Durso. *See also* Sandy James et al., *The Report of the 2015 U.S. Transgender Survey* 212-23, National Center for Transgender Equality (2016), http://www.ustranssurvey.org/reports.

The discrimination experienced by LGBT people in commercial settings sometimes is vulgar, expressing contempt for these customers. Examples include a California car salesperson calling a woman a "fucking carpet muncher" (A.S. Statement) and a group of friends in Washington, D.C. being called

"GAY BITCHES" on their restaurant receipt. A.G. Statement.

Even licensed health care professionals can display bias, such as the degrading treatment of a gay man who checked into a New York City hospital with a severe infection. He later reported:

> I was treated roughly physically and emotionally and called a faggot on more than one occasion by a health aide. At one point, I was dragged down the hall roughly in an office chair, because they said they were short on beds, and I fell out of the chair. ... I was left on the floor, where I went into convulsions and urinated on myself. I was later told I had a seizure and a cyanotic episode ... I could hear the nurse running toward me yelling that she was going to lose her job over this. The health aide responded: "This junky faggot isn't going to make you lose your job."

M.H. Statement.

Of course, not all anti-LGBT discrimination cases involve obscenities. But the reports reflect that epithets are common, as are invocations of religion to excuse discrimination. One example is the account of an LGBT Lyft ride-service customer subjected to verbal abuse and religious admonitions by his driver, who self-identified as an evangelical pastor:

> I was on my way in a Lyft to Shabbat lunch. My driver ... noticed my yarmulke and told me I should not be riding in a car on Saturday because it

> makes me a bad Jew. The comments continued after the driver noticed a rainbow flag stitched to my yarmulke. "Good Jews don't have sex on Shabbat" ... [He] added "the Bible forbids gay sex" along with a slew of homophobic slurs. ... [T]he insults lasted for about eight minutes until the driver pulled over sharply and kicked me out—about a half-mile from my destination.

M.A. Statement.

To the person treated this way, an asserted religious motive does not ameliorate the harmful impacts. *Amici*'s review of discrimination reports for this brief revealed many examples of parallel fact patterns showing that "you aren't welcome here" messages greeted LGBT people in many contexts—sometimes voiced in religious terms and sometimes secular in tone—but always inflicting similar injuries.

For example, Lambda Legal has received numerous calls reporting discriminatory medical care denials and other unequal treatment by health professionals, some in the name of religion and others not. In one case culminating in litigation, *North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court (Benitez)*, 189 P.3d 959, 959 (Cal. 2008), Lambda Legal's client was denied a common infertility treatment she had sought after two years of unsuccessful pregnancy attempts. As she explained: "[g]iven how long I had been trying to become pregnant, I expected that [the doctor] would recommend [intrauterine insemination] without delay. Instead, she told me that she had a religiously

based prejudice against assisting a homosexual to conceive a child by artificial insemination." Benitez Decl. Opp'n Defs.' Mot. Summ. Adjudication at 2:11-14 (¶7), *N. Coast Women's Care Med. Grp., Inc. v. San Diego Cty. Superior Court*, No. GIC 770165 (Cal. Super. Ct. filed March 25, 2004), https://www.lambdalegal.org/in-court/legal-docs/ca_benitez_20040325_declaration-of-guadalupe-benitez ("Benitez Decl.").

J.M., an Alabama resident, faced discrimination by a health care provider that took the form of invasive, anti-gay proselytizing:

> When my partner was a hospital patient, he told the treating physician he was gay on the first day of his hospitalization. The physician responded, "I'm sorry for that." During a subsequent hospitalization, he was treated by the same physician. During that stay an uninvited guest showed up to the room to pray over my partner, and the following day the physician left a pamphlet on my partner's tray that said you must "repent and be filled with the spirit or you will go to hell." The physician continued to question my partner about his religion.

J.M. Statement.

Other callers sought help from mental health professionals, only to be treated so abusively that it worsened their condition. K.S., a transgender woman in Dallas who sought help because she had become suicidal, recounted:

> On several occasions, I was asked by nurses and orderlies intrusive questions about my genitals as well as other inappropriate questions about my transgender status. When I complained ..., a nurse told me that I should just "expect to be treated like this." On multiple occasions, they made me sleep on the hallway floor rather than in a room, and when I was finally given a room, it was an isolation room. ... I was also prevented from using the bathroom for hours at a time ... [and] denied use of [my electric shaver] for a week, which caused me to grow a beard. The staff of the facility discussed my transgender status loudly ..., and as a result, within the first couple days of my arrival all of the patients around me knew, which caused me to suffer sexual harassment from two male patients.

K.S. Statement. Due to this treatment, K.S. attempted suicide twice while at that facility. *Id.*

As with lesbian, gay and bisexual patients, sometimes health care providers invoke religion to justify refusing to treat transgender patients equally. Lambda Legal client Jionni Conforti was refused a medically necessary hysterectomy that his physician was prepared to perform because the local hospital where the physician had admitting privileges forbids all gender-dysphoria-related care on religious grounds. *Conforti v. St. Joseph's Healthcare System*, No. 2:17-cv-00050-JLL-JAD (D.N.J. filed Jan. 5

2017), https://www.lambdalegal.org/in-court/cases/nj-conforti-v-st-josephs.

In the context of transportation services, a quintessential public accommodation, LGBT people have encountered sudden, jarring discrimination—sometimes in the name of religion and other times not—while simply trying to get from one place to another. Taxi and ride-share drivers, for example, have harassed and even ejected LGBT passengers from their vehicles short of their destinations. The previously described experience of M.A., who was subjected to anti-gay slurs and religious condemnation by the self-described evangelical ride-share driver, exemplifies this. M.A. Statement.

So, too, does the 2013 experience of Steven W. and Matthew M., then a couple, whose Chicago taxi driver threatened to eject them at the side of the highway late at night during a rainstorm. They explain: "On the way home, we exchanged a quick kiss in the backseat of the cab. When the driver saw us kiss, he pulled the cab over on the side of the Kennedy Expressway and demanded we exit the cab right there on the side of the highway." M.M. and S.W Statement.

This incident parallels the report of a Portland, Oregon, couple who actually was ejected from a cab late at night on the side of the interstate. Aimee Green, *Lesbian couple sues Broadway Cab, driver for $38,000 after left beside Interstate 84*, The Oregonian (July 28, 2014), http://www.oregonlive.com/portland/index.ssf/2014/07/lesbian_couple_sues_broadway_c.html.

Same-sex couples have been ejected from other public accommodations for merely showing the same

type of affection commonplace for different-sex couples. *See, e.g.*, Richard Ruelas, *Woman in hotel incident speaks on bill*, The Republic (Feb. 26, 2014) (lesbian couple celebrating anniversary ejected from Phoenix restaurant for mild show of affection), http://www.azcentral.com/story/news/2014/02/27/woman-in-hotel-incident-speaks-on-bill/5856357/; *Dodgers Apologize to Lesbian Couple*, ABC News (Aug. 24, 2000) (couple ejected from baseball game for kissing), http://abcnews.go.com/Sports/story?id=100736. This double standard persists more than thirty years after being recognized as discrimination. *E.g.*, *Rolon v. Kulwitzky*, 200 Cal. Rptr. 217 (Cal. Ct. App. 1984) (holding that denying same-sex couples opportunity to sit at romantic "couples" tables was discrimination).

Likewise, the hospitality industry often is inhospitable to LGBT people. Same-sex couples report having been turned away from lodging both in the name of religion and without that reason.

For example, a California-resident lesbian couple was refused by a bed and breakfast in Hawaii, the owner telling them she "felt uncomfortable renting a room to homosexuals, citing her personal religious views." Mot. Summ. J. Bufford Decl. at ¶4, *Cervelli v. Aloha Bed & Breakfast*, No. 11-1-3103-12 (Haw. 1st Cir. Ct. filed Feb. 4, 2013), https://www.lambdalegal.org/in-court/legal-ocs/hi_cervelli_20130213_declaration-of-taeko-bufford. But, a gay male couple seeking to reserve a vacation rental in California reported that their application was rejected simply due to their "unacceptable 'homosexual orientation.'" M.O. Statement.

L.M., an African American gay journalist, was reviewing a Chicago hotel for a magazine for LGBT people of color. As he approached the front desk, he "heard an older African American male employee saying 'fag,' 'fucking homo,' and 'he needs to find another hotel because he ain't staying here' to his co-worker." L.M. Statement. As he explained, L.M. felt deeply humiliated:

> It wasn't whispered but blatantly directed towards to me. ... When it was my turn [at] ... the front desk, ... I confronted him about those nasty comments and he didn't deny them. The folks behind just continued to laugh ... Never have I felt so powerless and vulnerable. That day stole a part of me. ... I began to lose my confidence, self-worth and felt invisible to the world. I shall never forget his face and the sea of laughter from his audience.

Id.

Among all these contexts of disparagement and service denial, one of the most painful is when LGBT people grieving the death of a loved one are not even allowed the dignity and comfort of respectful funeral services. In one Lambda Legal case, after a Mississippi funeral home refused to pick up the body of a deceased gay resident as pre-planned by the decedent's family, the nursing home manager testified that the funeral home worker had objected, stating: "This goes against everything I believe in. I'm a Christian." McClendon Dep. at 14:14-16, *Zawadski v. Brewer Funeral Servs.*, No. 55CI1:17-cv-00019-CM (Miss. Pearl River Cty. Circ. Ct. June 14,

2017). *See also* https://www.lambdalegal.org/in-court/cases/ms_zawadski-v-brewer-funeral-services; WATE Staff, *Tennessee widow says funeral home refused to serve her over same-sex marriage* (Aug. 2, 2017), http://wncn.com/2017/08/02/tennessee-widow-says-funeral-home-refused-to-serve-her-over-same-sex-marriage/.

Other examples of discrimination further reinforce the diversity of settings in which same-sex couples and their families are vulnerable. Consider the series of rejections visited upon A.S. and R.S., a married couple living outside Nashville, Tennessee. When A.S. became pregnant, she wanted to deliver at home with a midwife due to her medical history. They investigated and made initial calls. But then,

> excitement quickly turned to doubt, embarrassment, and sadness when the first midwife turned us down ... [saying] her midwifery practice was a part of her ministry and therefore she was not comfortable working with a same-sex couple. While I had experienced similar situations when we were planning our wedding, this felt more profound ... it was now affecting our child. As we ... were turned down by every midwife for the same reason, I felt utterly powerless and began to wonder if we would be able to find a qualified provider at all. My access to quality medical care, and that of our unborn child, was greatly reduced because of who I love. Our son was

> discriminated against before he was ever born.

A.S. Statement.

The couple met rejection again when trying to enroll in birthing classes. The instructor said they should do private classes because "she didn't feel the other couples in a group class would accept" a same-sex couple. But private classes were too expensive, leaving A.S. and R.S. with "the sense of powerlessness." *Id.*

Then, when their son was two, A.S. and R.S. chose a childcare facility attended by many neighboring children, only to have history repeat. A.S. recounts:

> When our son was denied an application because he had two Moms, we were heartbroken. He had been very excited about going to school with his friends and didn't understand when we had to tell him he couldn't. These events altered the bonds he had formed with the neighborhood children from birth and his personal connection with his community.

Id.

The family of H.C. and L.C., a lesbian couple of Austin, Texas, likewise met rejection. When their two-year-old daughter, M.C., fell and knocked out her front tooth, L.C. rushed the crying, bleeding child to a pediatric dentist. H.C. recounts:

> I was at work at the time. When my wife and daughter arrived at the dentist's office, he asked my wife "who

> is the real mother?" ... My wife ... explained that M.C. has two mothers. The dentist told my wife that "a child cannot have two mothers" and said that he would only see the biological mother (me) of our daughter with a birth certificate as proof. My wife called me sobbing, and told me, "They want the real mom to be here. You have to come and bring M.C.'s birth certificate before they will treat her." I was shocked. ... We were blindsided by this whole encounter.

H.C. Statement. The devastation of this experience was greater because it came at the hands of a health professional, as H.C. explained:

> Although my wife and I ... expected we might face discrimination at some point in our lives ..., we never expected to face discrimination from a medical provider—especially from someone taking care of our child. I don't think anything could have prepared us for this.

Id. See also Abby Phillip, *Pediatrician refuses to treat baby with lesbian parents and there's nothing illegal about it*, Wash. Post (Feb. 19, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/02/19/pediatrician-refuses-to-treat-baby-with-lesbian-parents-and-theres-nothing-illegal-about-it.

Refusals to accept a child's same-sex parents can last into that child's adulthood. While on a family cruise, S.S. of New York wanted to purchase a beer/wine package for her son. S.S. Statement. Given his age, parental approval was required. But, because they have different last names, the sales clerk did not believe she was his parent and insisted on speaking with the father. S.S. presented her son's birth certificate with her name and his other mother's name. The clerk then questioned how there could be two mothers and continued to ask for "the father." As S.S. recounts,

> by this time she had caused quite a scene. Both of my children, along with a whole crowd of people, had gathered and witnessed the entire situation. ... I was shocked that in 2016 on a major cruise line, docked in New York City, I would face discrimination because I am a lesbian and my son has two mothers. ... It was ... humiliating, and upsetting to my entire family.

Id.

These incidents are merely a representative sampling of the approximately one thousand records reviewed by Lambda Legal and Family Equality, which in turn represent a small fraction of the discrimination against LGBT people across the country. With discrimination in fact so common for this population, Petitioners' assertions to the contrary are misleading and, especially given the many voices joining their effort, are a telling indication of why this reality persists.

B. Anti-LGBT Denials of Wedding-Related Services And Goods In Particular Are Increasingly Common.

In the context of wedding-related services and goods specifically, Petitioners inaccurately contend that anti-LGBT denials are rare. They likewise are mistaken in claiming that wedding-related goods and services represent a distinguishable area of commerce in which desires to refuse equal service to same-sex couples are novel and deserve special solicitude. In fact, court records and news reports confirm a proliferation of wedding-related discrimination problems, building on a sizable prior record of religion-based discrimination cases.

A survey of federal and state decisions reported between October 1, 2012, and October 1, 2017, addressing claims of sexual orientation or gender identity discrimination, reveals many involving free exercise and/or free speech challenges to public accommodations nondiscrimination laws by vendors of wedding-related services. *See, e.g.*, *Telescope Media Grp. v. Lindsey*, No. CV 16-4094, 2017 WL 4179899 (D. Minn. Sept. 20, 2017) (wedding videography company); *Washington v. Arlene's Flowers, Inc.*, 389 P.3d 543 (2017) (florist); *Gifford v. McCarthy*, 23 N.Y.S.3d 422 (N.Y. App. Div. 2016) (event venue); *Klein, dba Sweetcakes by Melissa v. Oregon Bureau of Lab. & Indus.*, No. CA A159899 (Or. Ct. App. filed April 25, 2016) (bakery); *Odgaard v. Iowa Civil Rights Comm'n*, No. 14-0738 (Iowa Sup. Ct. appeal dismissed 2015) (event venue), *see also* https://www.lambdalegal.org/in-court/cases/odgaard-v-iowa-civil-rights-commission; *Elane Photography,*

LLC v. Willock, 309 P.3d 53 (N.M. 2013), *cert. den.* 134 S. Ct. 1787 (2014) (photography studio).

Petitioners' claim that such discrimination is rare is particularly curious because their counsel here, Alliance Defending Freedom (ADF), has represented many of the businesses seeking to evade public accommodations laws in these service-denial cases. Indeed, ADF encourages such conduct by businesses and invites them to contact the organization for legal representation. *See* ADF's "*You Are Free to Believe, But Are You Free to Act?*" at https://www.adflegal.org/issues/religious-freedom/conscience.

The Washington Post recently reported on ADF's plans to proliferate this type of litigation, describing the agency as abundantly resourced and staffed, and as the "Christian right legal advocacy group behind same-sex marriage and trans rights challenges across the country," with "3,000 attorneys across the country and $44 million in funding." Kyle Swenson, *Company's Ban Against Gay Weddings is Akin to 'White Applicants Only' Sign, Judge Says*, Wash. Post (Sept. 22, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/09/22/companys-ban-against-gay-weddings-is-akin-to-white-applicants-only-sign-judge-says.

Separate from this organized effort, such discrimination is occurring spontaneously in the south and north, in larger cities and small towns. One recent example is the treatment of A.R. and S.F., a lesbian couple who won the public drawing for event-planning services at a bridal expo in Atlanta this spring, only to be rejected. The planners informed them:

> ... we have decided the only way to stay true to who we are will be to decline serving as the planners for your wedding. Please understand, we had every intention of following through with what we offered because we are women of our word; but what we have come to realize is that we are also women of our faith.

A.R. and S.F. Statement.

C.D., who lives in a small town in Minnesota, gives another example. She was preparing for her gay son's wedding and wanted to patronize the local floral shop. But as she was giving the order,

> ... and it came out that it was a gay wedding, she stopped writing and said "oh boy, that's a tough one." I asked "what do you mean, because it's a gay wedding?" She said "yes." I went into Mom mode and asked what she would do if one of her children came to her and told her they were gay. She said they would pray. She told me she didn't think she could support providing flowers for a gay wedding.

C.D. Statement.

Looking forward, Petitioners' argument that this case will not "open the floodgates" is further belied by the Nashville Statement, issued in August 2017 by a large group of self-identified Christians. Coalition for Biblical Sexuality, *Nashville Statement* (2017), https://cbmw.org/nashville-statement/. Both a rallying cry and a buttress for those intending to

assert religious defenses to discrimination claims, it forcefully condemns LGBT individuals and characterizes contemporary anti-LGBT bias as religious doctrine. If this Court opens the door, the Statement promises a stampede of cases seeking exemptions from civil rights laws.

II. PUBLIC ACCOMMODATIONS NONDISCRIMINATION LAWS MUST BE ENFORCED TO PREVENT THE MANY HARMFUL EFFECTS OF DISCRIMINATION.

A. Anti-LGBT Discrimination Has Immediate Harmful Effects.

The immediate harmful effects of public accommodations discrimination take many forms. There are dignitary and emotional injuries from being told one is not worthy of being served on equal footing with others, and tangible repercussions as well. Ultimately, discrimination is harmful whether or not the goods or services can be readily obtained elsewhere.

The dignitary and emotional injuries that LGBT people commonly report after having been refused service include feeling "insulted, hurt, and upset, and ... degraded" (Oliver Statement); "upset, distressed, and humiliated" (Mot. Summ. J. Cervelli Decl. at 3 ¶10, *Cervelli*, https://www.lambdalegal.org/in-court/legal-docs/hi_cervelli_20130213_declaration-of-diane-cervelli); and "reduced to tears" and "stunned." *In the Matter of: Klein, dba Sweetcakes by Melissa*, 34 BOLI 102 at *6 (2015) (Or. Bur. Lab. & Indus. Final Order, quoting hearing testimony), *appeal pending*, No. CA A159899 (Or. Ct. App. filed April 25, 2016).

When same-sex couples are turned away from wedding-related services, the contrast between what should have been a celebratory experience and the humiliation of the rejection is wounding. "It really hurt because it was somebody I knew," acknowledged Robert Ingersoll, a plaintiff in *Arlene's Flowers*, who was refused service by his florist. *Barronelle Stutzman, Arlene's Flower Shop Florist, Refuses Washington Gay Wedding Job Because Of Religion*, Huffington Post (Mar. 7, 2013), http://www.huffingtonpost.com/2013/03/07/arlenes-flower-shop-gay-wedding-washington_n_2828195.html. Mr. Ingersoll recalled, "We laid awake all night Saturday. It was eating at our souls." *Id. See also Arlene's Flowers* at 566.

As Jennifer McCarthy, a member of the lesbian couple in *Gifford v McCarthy*, explained:

> When we were rejected for being a same-sex couple, beyond losing what we thought was the perfect venue, I felt judged and dismissed for who I was and for my relationship. Nobody should feel like that.
>
> It is difficult to describe how heartbreaking it is when someone says to you that, because you are marrying someone of the same sex, you cannot have the options that heterosexual couples have.

Farm owners appeal $13,000 fine they were given after refusing to host lesbian wedding at their venue, Associated Press (Nov. 23, 2015), http://www.daily

mail.co.uk/news/article-3330025/NY-farm-owners-denied-lesbian-couple-wedding-appeal.html.

The emotional and dignitary injuries of discrimination can be more acute due to the circumstances. For example, those seeking medical care often are particularly vulnerable because they must place themselves or their children in others' hands and trust they will be cared for according to medical standards and with respect. One former Lambda Legal client, Illinois resident Naya Taylor, described the emotional effects of being denied medical care as follows: "When they said, 'we don't have to treat people like you,' I felt like the smallest, most insignificant person in the world." Lambda Legal Press Release, https://www.lambdalegal.org/news/il_20140416_sues-doctor-clinic. *See also Taylor v. Lystila*, Complaint, No. 2:14-cv-2072 (C.D. Ill. April 15, 2014), https://www.lambdalegal.org/in-court/legal-docs/taylor_il_20140416_complaint.

Similarly, Jionni Conforti said being denied care by a New Jersey hospital made him feel humiliated and "completely disrespected. ... That's not how any hospital should treat any person regardless of who they are. A hospital is a place where you should feel safe and taken care of. Instead I felt like I was rejected." Derek Hawkins, *Catholic hospital approved his hysterectomy, then refused because he was transgender, suit says*, Wash. Post (Jan. 6, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/01/06/catholic-hospital-okd-his-hysterectomy-then-denied-him-because-he-was-transgender-suit-says. *See also Conforti*, https://www.lambdalegal.org/in-court/cases/nj-conforti-v-st-josephs.

Trauma from discrimination also is compounded when people are rejected in front of their loved ones, which results in additional humiliation and impacts family members, too. Rachel Bowman-Cryer, a member of the same-sex couple in *Sweetcakes by Melissa*, experienced this. Her mother, Cheryl McPherson, had only recently accepted Rachel's sexual orientation when Rachel and Laurel began planning their wedding. Showing support, Cheryl accompanied Rachel to order the cake. The bakery owner then shocked them both by refusing service, citing religious objections:

> [Rachel] began crying. She felt that she had humiliated her mother and was anxious whether [Cheryl] was ashamed of her, in that [Cheryl] had believed that being a homosexual was wrong until only a few years earlier. ... On the way out to their car and in the car, [Rachel] became hysterical and kept telling [Cheryl] "I'm sorry" because she felt that she had humiliated [Cheryl].

In the Matter of: Klein, 34 BOLI 102 at *3 (quoting hearing testimony including Cheryl's testimony that the owner "had told her that 'her children were an abomination unto God.'").

Arbitrary refusals also affect family members of LGBT individuals. C.D. of Minnesota, who sought to purchase flowers for her son's wedding, described the impact on her of the rejection of her son:

> I left, went back to work and cried, not for myself but for anyone who is currently being discriminated against

> for any reason. To make someone feel they are not worthy of a service because of their sexual orientation or race is a horrible way to treat a human being.

C.D. Statement.

A mother whose daughter was refused by a Vermont event venue similarly expressed her own emotional trauma from seeing her child rejected:

> I had been so excited to help plan my only daughter's wedding reception, so when the Wildflower Inn told me that my daughter wasn't welcome there, it was like being kicked in the stomach, ... Someone who didn't even know us was telling me that my daughter wasn't good enough to have her reception at their facility while everyone else who sees the resort's website is welcome.

Michelle Garcia, *Lesbian Couple Sues After Inn Rejects Wedding Reception*, Advocate (July 19, 2011), https://www.advocate.com/news/daily-news/2011/07/19/lesbian-couple-sues-after-inn-rejects-wedding-reception.

Even informing loved ones about discrimination after the fact can aggravate the emotional turmoil of the prior incident. A.R. and S.F., describing how "offensive and dehumanizing" it was to be refused a wedding planner's service after winning the public raffle, "especially in the midst of assembling what should be a delightful celebration," explained that it was additionally "difficult sharing the devastating

news with our family and friends the next morning." A.R. and S.F. Statement.

Especially for children, discriminatory treatment that denies the validity of their families can inflict deep psychological and emotional wounds. *See Obergefell*, 135 S. Ct. at 2600-01 (noting the "harm and humiliat[ion]" for children of same-sex couples due to stigma and discrimination against their parents). As A.B. recounted, when an airline employee repeatedly refused to allow her, her wife, and their son to board an international flight out of JFK Airport because the attendant refused to recognize them as a family:

> [T]his episode was extremely distressing to us and to our son. I felt frustrated, humiliated and disempowered. Being belittled and demeaned in front of our child was a terrible injustice. Having our child's connection to us questioned—in front of him!—was terrifying for each member of our family. Afterward, three-year-old [R.] repeatedly asked us, "Why the mean lady wouldn't let us on the plane?"
>
> That IS the question, isn't it?

A.B. Statement.

Another same-sex couple similarly was refused family boarding access; they explained, "[a]s two gay men raising children, we are particularly concerned that actions by other people may engrain in our children a belief that our family is not a 'real' family or is somehow inadequate." G.M. and S.B. Statement. They said being denied recognition at an airline gate

was "particularly upsetting to our daughter, who is old enough to understand that her family was being treated differently despite our best efforts to shield her from what was happening." *Id.*

Religious reinforcement of anti-LGBT bias often increases the mental health impacts of discrimination. Ilan H. Meyer et al., *The Role of Help-Seeking in Preventing Suicide Attempts among Lesbians, Gay Men, and Bisexuals*, 8, Suicide & Life-Threatening Behavior (2014), http://www.columbia.edu/~im15/papers/meyer-2014-suicide-and-life.pdf ("although religion and spirituality can be helpful to LGB people, negative attitudes toward homosexuality in religious settings can lead to adverse health effects").

The Center for American Progress has found that 47.7% of LGBT people who reported discrimination in a one-year period said the discrimination negatively impacted their spiritual well-being. Singh & Durso. The experience of Guadalupe Benitez illustrates this point. Upon being denied medical care, she felt "surprised and profoundly distressed" by the doctors' refusal to treat her the same as other patients, and "was particularly upset by [her doctor's] references to her religion and the fact that she would permit her religious beliefs to result in a situation where she would withhold medical procedures she provided to her other patients." Benitez Decl. at 2:15-16, 19-22 (¶8).

What causes many LGBT people to live in a state of heightened anxiety is the randomness of when religiously motivated discrimination strikes. Consider the treatment of Army veteran Kendell Oliver, who was denied service by a barber shop.

Oliver identifies as masculine and requested a man's haircut. But the proprietor refused, saying he considers Oliver female and objects on religious grounds to cutting women's hair. Complaint, *Oliver v. The Barbershop*, No. CIVDS1608233 (Cal. San Bernardino Cty. Super. Ct. filed May 25, 2016), https://www.lambdalegal.org/in-court/legal-docs/ca_oliver_20160525_complaint; Deft's Answer to Plaintiff's Unverified Complaint (July 27, 2016), https://www.lambdalegal.org/in-court/legal-docs/oliver_ca_20160727_defendants-answer-to-complaint. *See also* Julie Zauzmer, *Barber refuses to cut transgender Army veteran's hair, citing religious views*, Wash. Post (March 15, 2016), https://www.washingtonpost.com/news/acts-of-faith/wp/2016/03/15/barber-refuses-to-cut-transgender-army-veterans-hair-citing-the-bible/?utm_term=.6a 2a794d06b6.

Government-regulated settings such as post offices similarly might seem an obviously improper place for discrimination based on employees' religious beliefs. The surprise only increased the humiliation for Illinois resident A.R., a transgender man who had legally changed his name, but was laughed at by postal workers who forced him to keep his previous female name on his post office box. A.R. Statement. A.R. recounted that "a supervisor made it clear that her reason for refusing to accommodate me was that she was Catholic and being transgender was against her religion." *Id.*

Respectful treatment also should be a reliable norm from licensed financial professionals. But, such was not the experience of S.C., a Missouri resident, who reported that when she brought her same-sex fiancée and their paperwork to the accountant her

family had used for years, and requested help filing the next year's taxes as a married couple, the accountant's representative:

> got a hostile look on her face and stated, "Oh we don't do that." I said, "What, taxes for married people?" Then she loudly whispered (while glancing over at the gentleman in the lobby waiting) "Same-Same" ... as if to say same-sex couples. I asked to speak with the CPA and after a bit was taken back to his office. One of the first things he told us was "We are a Christian organization." ... he didn't feel he could sign a tax return attesting to us being a married couple due to his religious beliefs.

S.C. Statement. This rejection compounded a prior discriminatory rejection the couple had experienced when trying to order a wedding cake from a highly rated baker, only to be refused. As S.C. recalled, "This left my fiancée in tears." *Id.*

As is clear from these narratives, public accommodations discrimination also can cause other immediate injuries, beyond emotional trauma. Those who are rejected by a place of business must spend time and resources to find another business to accommodate them, which can be difficult. Having to start anew, for example with wedding or travel planning, imposes costs. Some denials, such as by accountants or medical providers, can have legal or medical consequences. In the case of funeral services, sudden logistical nightmares inflict stress and indignities that no bereaved should have to bear.

Virtually all who reported public accommodations discrimination to Lambda Legal or Family Equality described harmful emotional and dignitary impacts.

Finally, ejection from a public accommodation can be frightening and life-endangering. As Matthew M., who was rejected by a taxi driver in 2013 after sharing a brief kiss with his then-partner, reported, "[w]hen the driver demanded that we get out of the cab, I was afraid. It was late, there was a rainstorm, we were on an expressway and I can't imagine what would have happened if the driver had actually kicked us out of the cab." *See* https://www.lambdalegal.org/blog/20131028_cab-driver-kicks-out-couple-for-kiss.

B. Anti-LGBT Discrimination Can Cause Long-Lasting Residual Injuries

Beyond immediate harms, discriminatory trauma can have long-term and residual effects, including "psychologically defeating and stigmatizing injuries caused by feelings of inferiority and indignity." *Cortez v. State*, 855 P.2d 1154, 1156 (Or. 1993). Those injuries can be debilitating and exacerbate the stress from social exclusion and stigma, leading to serious mental health problems including depression, anxiety, substance use disorders, and suicide attempts. *See, e.g.*, Ilan Meyer & David Frost, *Minority Stress and the Health of Sexual Minorities*, Handbook of Psychol. & Sexual Orientation, 252–66 (Charlotte Patterson & Anthony D'Augelli, eds., 2012), https://www.researchgate.net/profile/David_Frost8/publication/289008046_Minority_Stress_and-the-Health_of_Sexual_Minorities/links/5697d8eb08aec79ee32b56b8/Minority-Stress-and-the-Health-of-Sexual-Minorities.pdf.

Furthermore, the resulting stress can cause physical as well as mental disorders. Meyer & Frost at 252; *see also* David Lick et al., *Minority Stress and Physical Health Among Sexual Minorities*, 8 Perspect. Psychol. Sci. 527–30 (2013), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.948.2105&rep=rep1&type=pdf. M.H. described such emotional and physical injuries from the discrimination he suffered at the hands of biased hospital staff:

> I became extremely depressed as a result of what happened. ... I am still suffering some physical (gastro-intestinal) and emotional effects, including post-traumatic stress disorder. I cannot go into a hospital any more without feeling traumatized, and the shame of the experience has also made it difficult for me to even talk about the experience with a therapist, even though I am a therapist myself.

M.H. Statement.

Similarly, K.S. who, as previously described, became even more suicidal after abuse at a mental hospital, reported that she remains deeply traumatized to this day. K.S. Statement. And Guadalupe Benitez, after being denied donor insemination following nearly a year of other treatments, recounted that she felt "duped, humiliated" and "was devastated and cried for several days." Benitez Decl. at ¶35. She became "wary and distrustful of others" and her "prior difficulties with anxiety and stress-related headaches, which had resolved ... resumed." *Id.* at

¶45. She ended "with a sense of vulnerability due to [her] sexual orientation that [she] did not have before..." *Id.*

Many LGBT people experience a compromised sense of safety following discriminatory trauma and respond by making significant life changes. Edward Alessi et al., *Prejudice Events and Traumatic Stress among Heterosexuals and Lesbians, Gay Men, and Bisexuals*, 22 J. Aggression, Maltreatment & Trauma 510, 519 (2013), https://www.researchgate.net/profile/Edward_Alessi/publication/259353848_Prejudice-Related_Events_and_Traumatic_Stress_Among_Heterosexuals_and_Lesbians_Gay_Men_and_Bisexuals.

These changes include avoidance behavior. As Singh and Durso explain, among LGBT people who had not experienced a prejudice event in the last year, only 9.2% made a specific decision about where to live, 8.4% about where to shop, 15.1% avoided social situations, 5.9% moved away from rural areas, and 2.7% avoided doctors' offices, but among those who *had* experienced a prejudice event in the last year, those rates increased to 48.6%, 46.9%, 49.8%, 28.8% and 18.4%, respectively. Singh & Durso. Other documented changes in behavior include concealing personal relationships, changing the way one speaks, choosing where to obtain an education, and avoiding public transportation. *Id.*

Not everyone has the ability to avoid the sources of their discrimination; some must continue to suffer ongoing encounters. For example, A.S., whom a car sales agent called a "fucking carpet muncher," still must see that agent periodically:

> Having to bring my car in there for service was the most uncomfortable thing ever .... But the fact that they kept a woman there who did this is really horrible. It stressed me out any time I had to go there and the only reason I had to go there was because of where I live, and the other dealership was 45 miles away. I am not on a budget to get me out that way all the time. It was very upsetting, and no one should ever have to experience anything like that.

A.S. Statement.

The residual impact on the psychological well-being of LGBT people can include loss of trust and constant anticipation of more discrimination. Day-to-day interactions can become alienating. Even the simple task of going to the post office can become emotionally fraught when one has been singled out for demeaning treatment there, as A.R. described: "I feel that their mistreatment of me showed they would not work with transgender people, and that left me feeling vulnerable to abuse and discrimination." A.R. Statement.

The rejection sensitivity that results can lead to social inhibition, withdrawal, and isolation—responses associated with poor mental and physical health outcomes. Lick, *Minority Stress and Physical Health Among Sexual Minorities*, 8 Perspect. Psychol. Sci. at 534–35. A lesbian who grew up in North Carolina and suffered various forms of discrimination throughout her life illustrates this point, explaining:

> [T]he violent and often hurtful and intimidating actions taken directly against me have negatively affected the trajectory of my life in damaging and life-long lasting ways. ... [F]acing direct discrimination, particularly as a person who is "identifiable," has been harmful to my personal health and welfare and interfered with my ability to pursue happiness and improve my health and personal countenance. I have found myself withdrawing from going out much and engaging with the outside world, to protect myself from more harassment and painful discrimination.

J.T. Statement.

Similarly, in Oregon, a group of women banned from a popular bar because they are transgender described how "[a]fterwards, they couldn't sleep, missed work and pulled away from friends." Casey Parks, *Chris Penner, whose bar was shuttered by BOLI fines concerning transgender patrons, waging write-in campaign for labor commissioner*, The Oregonian (May 6, 2014), http://www.oregonlive.com/portland/index.ssf/2014/05/chris_penner_whose_bar_was_shu.html.

Because anti-LGBT discrimination is pervasive and results in fears that hostility may lurk behind any counter or storefront, this community has created "safe spaces," in which to relax and let down their guard. *See* Julio Capó Jr., *Gay Bars Were Supposed to be Safe Spaces. But They Often Weren't*, Wash. Post (June 24, 2016), https://www.washington

post.com/posteverything/wp/2016/06/14/gay-bars-were-supposed-to-be-safe-spaces-but-they-often-werent. Tragically, as the violent Pulse nightclub massacre in Florida last year shows, even in such safe spaces members of the LGBT community may be targets of life-shattering, even life-ending, bigotry. *See id.*; *see also* Daniel D'Addario, *The Gay Bar as Safe Space Has Been Shattered*, Time (June 12, 2016), http://time.com/4365403/orlando-shooting-gay-bar-pulse-nightclub/.

III. THE CREATION OF NEW RELIGION- OR SPEECH-BASED EXEMPTIONS FROM CIVIL RIGHTS PROTECTIONS WOULD WORSEN THE HARMFUL EFFECTS OF DISCRIMINATION.

Recognizing the compelling need to prevent discrimination and its harmful effects, many states have enacted non-discrimination laws. Those states with protections against sexual orientation discrimination have lower rates of psychological disorders among sexual minorities than those without such protections. Mark Hatzenbuehler et al., *State-Level Policies and Psychiatric Morbidity* in *Lesbian, Gay, and Bisexual Populations*, 99 Am. J. Pub. Health 2275 (2009), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2775762/.

Civil rights laws thus offer LGBT people the "opportunity to live and love free from ... injustice" (J.T. Statement) that many have sought for so long. However, in too many states, LGBT people still lack non-discrimination protections. Thanks to cases like this one, even those living in places with protections must confront the reality that they remain

vulnerable. The risk of continued discrimination is particularly acute when those providing services to the public believe they are entitled, in the name of religion or free speech, to refuse service to others based on who they are.

Again, Petitioners' assertion that this case will not "open the floodgates" is undermined by its own nationwide outreach campaign and the Nashville Statement. Such efforts to codify religion-framed discrimination as official doctrine, endorsed as a special exemption under law, threaten not just the wellbeing of LGBT people but the rule of law itself. This is because there is no limiting principle to temper the inevitable harms of the requested exemptions. As has been demonstrated, anti-LGBT refusals of service and other discrimination have not been limited to wedding-related services, whether "expressive" or not, but occur in myriad contexts.

Nor would the dangerous ripple effects of a decision in Petitioners' favor necessarily be limited to sexual orientation and gender identity discrimination. As the District Court in Minnesota recently explained in *Telescope Media Group*, 2017 WL 4179899, at *13, a business's announcement that it will not cater to same-sex couples is akin to a "White Applicants Only" sign, which certainly may be prohibited without implicating the First Amendment (citing *Rumsfeld v. Forum for Acad. & Inst'l Rights, Inc.*, 547 U.S. 47, 62 (2006)).

When even "sincere, personal opposition" to treating LGBT people equally "becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty

is then denied." *Obergefell*, 135 S. Ct. at 2602 (2015). *See also* Stanley Milgram, *Behavioral Study of Obedience*, 67 J. Abnormal & Social Psych. 371–78 (1963) (exploring how authority bias shapes attitudes). The stamp of governmental approval on discrimination has dangerous repercussions. Not only would a ruling that in effect condones discrimination lead to more discrimination, it would increase the risk of anti-LGBT violence. *See, e.g.*, Christopher R. Leslie, *Creating Criminals: The Injuries Inflicted by 'Unenforced' Sodomy Laws*, 35 Harv. C.R.-C.L. L. Rev. 103, 124, 137–43 (2000) (describing how violence and other anti-LGBT discrimination were rationalized by reference to anti-sodomy laws). "State-sanctioned condemnation of a group of citizens ... sends the clear message that this group is not entitled to the freedom from physical violence provided other citizens." *Id.* at 126. *See also* Charlene L. Smith, *Undo Two: An Essay Regarding Colorado's Anti-Lesbian and Gay Amendment 2*, 32 Washburn L.J. 367, 369–70 (1993) (documenting a three-fold increase in anti-gay violence after Colorado Amendment 2 was passed).

Similarly, discrimination can breed more dangerous discrimination if deemed socially acceptable. *See* Christian Crandall et al., *Social norms and the expression and suppression of prejudice: The struggle for internalization*, 82(3) J. Personality & Soc. Psych. 359–78 (2002) (examining effect of group norms on individual opinions). When unchecked, those biases and segregationist tendencies harm society as a whole as well the targeted groups. *See* Reva Siegel, *From Colorblindness to Anti-Balkanization: An Emerging Ground of Decision in Race Equality Cases*, 120 Yale

L. J. 1278, 1300-02 (2011) (emphasizing Court's role in warding off divisive threats to a cohesive society).

In contrast, continued commitment to civil rights laws promotes social cohesion and reduces harmful factional strife. The court below properly respected Colorado's nondiscrimination law, which "prevents the economic and social balkanization prevalent when businesses decide to serve only their own 'kind,' and ensures that the goods and services provided by public accommodations are available to all of the state's citizens." *Craig v. Masterpiece Cakeshop, Inc.*, 370 P.3d 272, 293-94 (Col. Ct. App. 2016).

Through its anti-discrimination laws, Colorado has committed to honoring longstanding principles of equal dignity for all. The Court should not allow Petitioners' requested exemptions to render these protections effectively meaningless.

CONCLUSION

The Colorado Court of Appeals' decision affirming the Commission's order should be affirmed.

Respectfully submitted,

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APPENDIX A

Additional *Amici Curiae* Statements of Interest

American Federation of Teachers, AFL-CIO

The American Federation of Teachers (AFT), an affiliate of the AFL-CIO, was founded in 1916 and today represents approximately 1.7 million members who are employed across the nation in K-12 and higher education, public employment, and healthcare. The AFT has a diverse membership, which includes a variety of protected classes, including many members who identify as lesbian, gay, bisexual, transgender or queer (LGBTQ). The AFT has a longstanding history of advocating for the civil rights of its members and the communities they serve, and fighting discrimination in the workplace and beyond.

Equality California

Founded in 1998, Equality California (EQCA) is the nation's largest statewide LGBTQ civil rights organization. Equality California brings the voices of LGBTQ people and allies to institutions of power in California and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ people. EQCA advances civil rights and social justice through education, advocacy, mobilization, legislative, electoral, and communications programs. EQCA is dedicated to combatting discrimination and injustice on the basis of sexual orientation or gender identity, and protecting the needs and interests of those within the LGBTQ community and vulnerable communities of which LGBTQ people are a part.

Equality Federation

Equality Federation is the movement builder and strategic partner to state-based organizations advocating for LGBTQ people. From Equality Florida to Freedom Oklahoma to Basic Rights Oregon, the organization amplifies the power of the state-based LGBTQ movement. Equality Federation works collaboratively with its state-based partners and others on many critical issues—from advancing workplace fairness and family recognition to defeating anti-transgender "bathroom bans" and HIV criminalization laws—that affect how LGBTQ people experience the world from cradle to grave. Together with their partners they work on cross-cutting issues impacting the LGBTQ community such as racial equity, reproductive justice, and immigration. In their advocacy program they partner with leaders on the ground to fend off attacks on the LGBTQ community and advance protections for LGBTQ people in state legislatures, where hundreds of bills affecting the community are introduced annually. In its leadership program Equality Federation ensures that state equality groups build power by training strong, resilient, and adaptive leaders in sustainable organizations.

The LGBT Bar Association of Greater New York

The LGBT Bar Association of Greater New York (LeGaL) was one of the nation's first bar associations of the LGBT legal community and remains one of the largest and most active organizations of its kind in the country. Serving the New York metropolitan area, LeGaL is dedicated to improving the administration of the law, ensuring full equality for members of the LGBT community, and

promoting the expertise and advancement of LGBT legal professionals.

Mazzoni Center

Mazzoni Center is the only health care and wellness provider in the Philadelphia region specifically targeting the unique health care needs of the LGBTQ community. Founded in 1979, Mazzoni Center has expanded over time to meet more of this community's needs and now offers a full array of primary health care services, mental and behavioral health services, and direct legal services. Mazzoni's legal services team assists LGBTQ people, including same-sex couples, to respond to discrimination in many areas, including places of public accommodation. Mazzoni's behavioral health team helps LGBTQ people cope with the emotional and psychic damage caused by discrimination against them because of their identity or the gender of the person they love. For these individuals and families, the question of whether commercial business owners are able to disregard laws that prohibit discrimination – whether based on professed religious belief or for other reasons – will determine whether they are protected against discrimination at all. Accordingly, Mazzoni Center and its clients have a strong interest in the issues before this Court.

National Center for Transgender Equality

The National Center for Transgender Equality, founded in 2003, is dedicated to advocating for fairness, opportunity, and wellbeing for transgender people. In 2015, NCTE conducted the U.S. Transgender Survey of over 27,000 adults across the country.

National Education Association

The National Education Association is the nation's largest professional association representing over three million members, the vast majority of whom serve as educators, counselors, and education support professionals in our nation's public schools. NEA recognizes the full dignity and humanity of all students and educators, and stands against discrimination based on race, gender, sexual orientation, gender identity, disability, ethnicity, immigration status, occupation, and religion. NEA believes that a great public school is a fundamental right of every child, and that our schools and communities must be free from intimidation and harassment, and safe for all educators, students, and their families, including those who identify as gay, lesbian, bisexual, and transgender.

PFLAG National

Founded in 1972 with the simple act of a mother publicly supporting her gay son, PFLAG National is the nation's largest organization uniting families, allies, and LGBTQ people. Now entering its 45th year of providing support, education, and advocacy, PFLAG has nearly 400 chapters and 200,000 supporters crossing multiple generations of American families in major urban centers, small cities and rural areas across the United States, Washington D.C., Puerto Rico, and the largest non-stateside U.S. military installation and base in the world, located in Germany.

PROMO

PROMO is Missouri's statewide organization advocating for LGBT equality through legislative

action, electoral politics, grassroots organizing, and community education. PROMO envisions a Missouri where everyone has full equality in the hearts and minds of citizens, in all areas of the law, regardless of sexual orientation, gender identity, or gender expression. A non-profit organization founded in 1986, PROMO represents the interests of an estimated 160,000 LGBT Missourians whose legal rights to be free from discrimination in public accommodations due to their sexual orientation or gender identity are impacted by the issues in this case.

The Trevor Project

The Trevor Project is the nation's largest LGBTQ youth crisis intervention and suicide prevention organization. Founded in 1998, the Trevor Project offers unique, free, and confidential crisis intervention services for LGBTQ youth, which are utilized by thousands of individuals each month. By monitoring and analyzing data obtained from these services, the Trevor Project also produces innovative research with implications for policy affecting LGBTQ youth. Furthermore, as an expert voice on issues affecting LGBTQ youth, the Trevor Project provides in-person trainings for adults who work with youth, a free online learning module for middle school and high school teachers, and other resources for youth and adults.

Whitman-Walker Health

Whitman-Walker Health is a community-based health center in Washington, DC, providing primary health care and HIV specialty care; mental health and addiction treatment services; dental care;

community health services; and legal assistance to more than 18,000 individuals and families annually. Approximately one-half of Whitman-Walker's health care patients and legal clients identify as lesbian, gay or bisexual; and the health center has one of the largest transgender and gender-nonconforming patient/client populations in the nation – almost 1,600 individuals. Whitman-Walker health care providers, lawyers and counselors frequently hear from their LGBT patients and clients of discriminatory incidents that have caused trauma and had harmful effects on the individuals' health.

APPENDIX B

Source of Narratives* Referenced in Brief

Persons (State)**	Help Desk # (if any)	Context	Most Recent Contact
A.B. *(NY)*	H0032434	Air travel	10/17/17
A.G. *(NJ)*	H0028936	Restaurant	10/16/17
A.R. *(IL)*	M0020748	Post office	09/22/17
A.R. & S.F. *(GA)*	S0018801	Wedding planners	10/13/17
A.S. *(CA)*	W0024923	Car lot	10/13/17
A.S. & R.S. *(TN)*	N/A	Health care & child care	10/18/17
C.D. *(MN)*	N/A	Florist	10/24/17
G.M. & S.B. *(NY)*	H0034871	Air travel	10/15/17
H.C. & L.C. *(TX)*	N/A	Dentist	10/18/17
J.M. *(AL)*	S0015912	Health care	10/17/17
J.T. *(NC)*	N/A	Various	10/18/17

Persons (State)**	Help Desk # (if any)	Context	Most Recent Contact
K.S. *(TX)*	SC0012976	Health care	10/17/17
L.M. *(IL)*	M0019265	Hotel	10/23/17
M.A. *(MD)*	H0033881	Ride share	10/13/17
M.H. *(NY)*	H0032311	Health care	10/17/17
M.M. & S.W. *(CA)*	M0015462	Taxi	10/13/17
M.O. *(CA)*	W0025388	Vacation rental	10/16/17
Kendall Oliver *(CA)*	N/A	Barber	09/15/17
S.C.***	M0018459	Accountant	10/24/17
S.S. *(NY)*	N/A	Cruise ship	10/20/17

* Other than from case law, litigation documents, and media accounts. These first-hand narratives were conveyed directly to Lambda Legal's Help Desk and/or to attorneys for *amici*.

** State of residence at time of incident.

*** State of residence undisclosed by request of S.C.